



Dear Members:

Following the [Assembly's release](#) late Monday night/early Tuesday morning, the Senate advanced their [one-house budget bills](#) and [Budget Resolution](#) late last night into today. LeadingAge New York is pleased that nearly all of our priority issues have been included in the proposals in one way or another, which means they live to fight another day as the State moves toward a budget deal by the end of the month. Both houses are expected to begin acting on their budget proposals and immediately convene the Joint Budget Conference Committee process to begin negotiating a final budget.

Highlights of both the Senate and the Assembly one-house budgets as they relate to senior housing and long-term/post-acute care are provided below.

General Medicaid Cuts

Across-the-Board Cuts: The Senate and Assembly reject the proposal made in the Executive Budget 30-day amendments to reduce payments for Medicaid services by \$380.4 million (0.8 percent)

Medicare/Medicaid Cross-over Payments: The Senate and Assembly reject reductions in the Medicare Part B cost sharing cap and the elimination of the exemption for psychology and ambulance services.

Nursing Homes

Case Mix Index Cap: Both the Senate and Assembly include our proposed language that requires DOH to convene a stakeholder workgroup that would review recent CMI data and the Department's analyses and make recommendations on how to improve accuracy of the process of adjusting rates for acuity. Both prohibit DOH from reducing or recouping CMI adjustments for periods prior to the implementation of the workgroup recommendations. The Senate further caps any funding reduction resulting from the workgroup process and requires the approval of an independent actuary prior to implementation.

Labor Cost Adjustment: The Senate and Assembly reject the proposal made in the Executive Budget 30-day amendments to eliminate the 1.5 percent increase in operating rates for nursing homes (and a corresponding 2 percent increase in hospital operating rates), which was to be effective Nov. 1, 2018.

Nurse Staffing: The Senate urges the Department of Health to engage stakeholders to examine how staffing enhancements can improve patient safety and the quality of healthcare service delivery, including the fiscal impact of staffing enhancements on providers, and release a report of the findings to the Legislature.

MLTC

Transportation: The Senate and Assembly reject the transportation carve-out from the MLTC benefit package. The Senate provides that MLTC plans (except PACE) may opt to arrange for transportation directly or use the state's transportation contractor.

Personal Care Utilization: The Senate adds a statutory provision to require, prior to any reduction in MLTC rates related to personal care services, the promulgation of regulations governing utilization management of personal care services and a determination by the independent actuary that the regulations will generate corresponding

cost reductions. The Assembly inserts into statute provisions limiting the ability of social services districts to reduce or deny personal care services and requiring these decisions to be made by a health care professional with relevant experience. The Assembly bill appears to apply this standard to comprehensive assessments for purposes of enrollment in MLTC plans and utilization limits under MLTC. In addition, the Assembly bill provides for the evaluation of existing assessment tools and the creation of new ones, in consultation with industry representatives.

ICS Transition: The Senate recommends that the Department of Health ensure that all healthcare providers who have engaged with Independence Care System be made whole. The Senate also encourages the department to commit to a transition between ICS and VNSNY Choice that does not negatively impact the patient population or health care providers.

Premium Transparency and Adequacy and Wage Funding: Both the Senate and Assembly bills include provisions to increase the transparency of MLTC rate-setting and strengthen oversight of the payment of minimum wage and home care recruitment and retention funding. Specifically, the Assembly bill does the following:

- Inserts a provision to ensure that managed care rates comply with laws governing wages and actuarial soundness.
- Requires DOH to establish separate rate cells for high-need enrollees.
- Requires managed care contracts to make available sufficient resources to pay long-term care entities (defined to exclude nursing homes) adequately to support recruitment and retention of a qualified workforce and compliance with wage and labor laws.
- Requires long-term care entities (defined to exclude nursing homes) to include in cost reports information concerning how they applied managed care payments to support recruitment, retention, and compliance with wage and labor laws.

The Senate bill:

- Adds language to require DOH to provide an accounting of costs incorporated into MLTC rates at least 60 days prior to the rate period and 60 days prior to any rate change. Requires a determination that rates are actuarially sound prior to the imposition of new requirements on plans that impose new costs.
- Requires funds appropriated to support compliance with minimum wage laws to be paid to providers at least 90 days prior to the effective date of the wage law. Funds must supplement existing contracts
- Home care recruitment and retention funding must be distributed by plans in their entirety using a reasonable methodology that supplements reimbursement rates. Plans must notify home care agencies of the amount of funds disbursed for this purpose. MLTC plans must attest to the use of the funds and the methodology used in disbursing them. It is unclear based on the language whether these provisions are intended to apply only to funding for home care for medically-fragile children and young adults.

OMIG: The Assembly accepts the Governor's Medicaid fraud and abuse proposals, including provisions to require the OMIG to conduct Medicaid Program Integrity reviews of managed care plans and recover up to 2% of the administrative component of a plan's revenues based on those reviews; and to require managed care plans to recover improper payments from network providers and remit them to the state. The Senate rejects these proposals.

Home Care

Fiscal Intermediary: The Senate and Assembly reject fiscal intermediary authorization limitations. The Senate restores \$75 million. It is unclear whether the Assembly restores any of the FI rate cut.

Personal Care Utilization: The Assembly rejects the proposal to impose stronger utilization controls on personal care under MLTC. The Senate adds language to require the promulgation of regulations governing personal care utilization and an actuarial determination prior to cutting MLTC rates (see above).

NPI Provider Number: The Senate and Assembly reject the requirement that home care aides obtain National Provider Identifiers.

TBI Wage Parity: The Assembly applies wage parity requirements to aides providing services under the TBI waiver program. The Senate does not address this issue.

Hospice Medicaid Eligibility: The Senate adds hospice to the statute that provides for expedited Medicaid eligibility determinations for those with an immediate need. The Assembly does not address this issue.

NYSOFA private pay model: The Assembly rejects the Governor's NYSOFA private pay model. The Senate authorizes implementation of private pay protocols for all programs administered by the office. Funds earned by Area Agencies on Aging would supplement, not supplant, funds provided by county, state, federal government. Fees are limited to 20 percent above the rates paid by Area Agencies on Aging or the wholesale price. Participant payments are not required by those under with income up to 400% of the FPL who remain a priority for the delivery of services.

EISEP funding: The Senate and Assembly both increase the EISEP funding in line with the Governors funding level, with the Senate providing an increase of \$1M.

NORCs/NNORCs: The Senate and Assembly both fund NORCs/NNORCs at the Governor's proposed level.

ADHC

ADHC Transportation: The Senate and Assembly rejected the proposal to shift management and responsibility of transportation away from adult day health care programs. The Assembly included the statutory language the ADHC Council proposed that would protect ADHC transportation in statute and eliminate the discretionary authority DOH is attempting to exert. The Senate provides that ADHC providers may opt to arrange for transportation directly or use the state's transportation contractor.

ACF/AL

SSI Increase for Congregate Care Level 3 Rate for ACF Residents: The Senate appropriates funds to increase the SSI rate by approximately \$4.00 per day, effective Jan. 1, 2020. The Senate language indicates that this increase is the first in a five-year commitment to increase the state share of the SSI rate for ACFs. The Assembly did not include any SSI increase in their budget proposal.

EQUAL Funding: Both the Senate and the Assembly accept the Executive Budget proposal to level fund EQUAL at \$6.5 million.

Enriched Housing Subsidy: Both the Senate and the Assembly accept the Executive Budget proposal to fund the Enriched Housing Subsidy at last year's level of \$380,000.

Criminal History Record Checks: Both the Senate and the Assembly accept the Executive Budget proposal to level fund CHRCs for adult care facilities at \$1.3 million.

Assisted Living Program Expansion: The Senate proposes to expedite the public needs analysis by which the demand for Assisted Living Program (ALP) beds is determined. Specifically, beginning April 1, 2020 (instead of 2023), additional ALP beds shall be approved on a case by case basis whenever the commissioner of health is satisfied that public need exists at the time and place and under circumstances proposed by the applicant. In addition, the bill proposes to move up the timeframe for existing ALP providers to again expand by nine or fewer beds. ALPs licensed on or before April 1, 2019 (instead of 2020) can apply for up to nine additional beds that do not require major renovation or construction no later than June 30, 2019 (rather than 2020). The ALP must agree to dedicate these additional beds to serve only Medicaid recipients, be in good standing with DOH, and in compliance with appropriate state and local requirements as determined by DOH. We do not see similar language in the Assembly bill.

Senior Housing

Security Deposit Cap: The Senate and Assembly reject the proposed limits on security deposits, including fees and charges, removing it from the budget negotiations process.

Resident Service Assistant: Neither the Assembly nor the Senate included our proposal to fund a resident service assistant program in affordable senior housing in their budget proposals.

Home Stability Support Program: The Assembly establishes a new program, the “Home Stability Support Program,” under which social services districts shall provide a shelter supplement (voucher) for up to five years to eligible individuals and families to prevent evictions and address homelessness. In addition to providing a housing voucher, services must be provided. Those may include, but are not limited to:

- Services to resolve conflicts between landlords and tenants and to facilitate fair and workable solutions;
- Referrals to legal services to households threatened with the loss of their homes through eviction, harassment or other means;
- Benefit/entitlement advocacy to ensure that households are receiving all federal, state and local benefits to which they are entitled, including medical assistance; and relocation assistance which provides for the identification of and referral to permanent and habitable housing, transportation, services, landlord/tenant lease negotiation services, and assistance in establishing utility services.

Spending Plan: The Senate’s plan for the Department of Homes and Community Renewal continues the State’s five-year investment in affordable and supportive housing with several small changes. The Executive proposal provides \$200 million for State-approved projects and other improvements related to housing developments owned or operated by the New York City Housing Authority – the Senate increased this amount to \$250 million. The Senate also proposes \$100 million in Capital funding for public housing authorities throughout the State whereas the Executive provided \$125 million.

Additionally, the Senate commits to \$20 million for Foreclosure Prevention Services statewide; adds \$4.9 million for the Neighborhood Preservation Program, including a \$150,000 set aside for the Neighborhood Preservation Coalition; adds \$2.0 million for the Rural Preservation Program, including a \$150,000 set aside for the Rural Housing Coalition; and adds \$1.0 million for additional housing programs.

Mortgage Insurance Fund Reserves: The Senate agrees with the Executive's proposal for the use of reserves from the Mortgage Insurance Fund.

Capital Projects

Health Care Transformation Grants: The Senate includes language, per our advocacy, to allow a minimum of \$20 million to be awarded to the development of new assisted living program beds, as opposed to "up to \$20 million". In addition, the Senate provides deadlines for the issuance of the Round 3 applications and awards. The Assembly accepts the Governor's proposal to shift \$300 million to Phase 2 of the Health Care Transformation capital grants program; adds \$25 million to Phase 3; and targets that \$25 million to a variety of community-based providers but does not include adult care facilities in that category.

Prevailing Wage Expansion: The Senate and Assembly budget proposal includes the language from bill A.1261(Bronson)/S.1947(Ramos) which would expand the definition of public works to include any private sector projects receiving any level of financial support from state or local entities and impose "prevailing wage" requirements on all levels of development, including pre-construction, construction and post-construction. LeadingAge New York opposes this legislation, as prevailing wage requirements could increase labor costs by 25 percent or more, thereby increasing overall construction project costs by 15-20 percent for many projects. LeadingAge New York's official memo of opposition can be found [here](#).

Next Steps

The Assembly and Senate will be debating and passing their one-house budget resolutions **today** and will immediately convene budget conference committees to begin final budget negotiations. Now that we know where each house stands on our issues, [it is imperative that legislators hear from you](#) as negotiations start to pick up! Please call your lawmakers and remind them of your priorities, thank them (where appropriate) for what they were able to get addressed in the one-house proposals, and let them know how critical it is to have these initiatives addressed in the final budget:

1. [Reject the Executive Budget's Devastating Nursing Home Cuts](#)
2. [Reject the Nursing Home Case-Mix Cap Budget Proposal](#)
3. [Include an SSI Increase for ACFs in This Year's Budget](#)
4. [Invest in Senior Housing Resident Assistants in This Year's Budget](#)
5. [Reject the ADHC Transportation Carve-Out Budget Proposal](#)
6. [Oppose Deep, Damaging Cuts to MLTC in This Year's Budget](#)
7. [Ensure ACF and ALP Access to Statewide Health Care Facility Transformation Program Funding](#)
8. [Oppose Prevailing Wage and Public Works Expansion](#)

Breaking News: According to a tweet from Bernadette Hogan of the NY Post, "Mujica (state budget director) said the entire budget needs to be reanalyzed to make up for \$550 million loss in healthcare funding from feds. No answer yet on where the budget that \$\$ will be recouped." So stay tuned for updates!

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